IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6813 OF 2007

Sudhakar Devidas Deshpande ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents.

WITH

WRIT PETITION NO. 6769 OF 2007

Rajshekhar Siddheshwar Narone..... ....Petitioner
V/s
The Executive Engineer & Ors..... ....Respondents

WITH

WRIT PETITION NO. 6771 OF 2007

A.L.Karvande ....Petitioner
V/s
The Executive Engineer (PWD) & Ors..... ....Respondents

WITH

WRIT PETITION NO. 6772 OF 2007

M.A.Samad ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH
WRIT PETITION NO. 6773 OF 2007

V.N.Potdar..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6774 OF 2007

Mohd. Iqbaluddin.... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6775 OF 2007

G.M.Buddhadeo..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6777 OF 2007

Syed Ahmed..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6778 OF 2007

A.H.Nandkishor..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6779 OF 2007

N.V.Joshi ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6780 OF 2007

H.S.Deshmukh..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6781 OF 2007

Mohd. Kader Ali..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6782 OF 2007

V.J.Kulkarni ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6783 OF 2007

A.K.Kadam ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6784 OF 2007

D.S.Gaiki ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6785 OF 2007

M.N.Borle ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6786 OF 2007

M.B.Deshpande..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6787 OF 2007

S.G.Dama ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6788 OF 2007

M.A.Kadar ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6789 OF 2007

M. Wahiduddin ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6790 OF 2007

G.K.Moinuddin..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6791 OF 2007

Mohd. Nizamuddin..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6792 OF 2007

C.N.Bakshee ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6793 OF 2007

M.A.Shareef ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6794 OF 2007

K.R.Shinde ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6795 OF 2007

Sayyad A. Ali ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6796 OF 2007

S.V.Hussaini ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6797 OF 2007

S.A.Mannan ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6798 OF 2007

B.A. Patel ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6799 OF 2007

P.N.Padikar ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6800 OF 2007

M.A.Sattar ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6801 OF 2007

M.K.Waghmare..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6802 OF 2007

Y.N.Deshpande..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6803 OF 2007

S.R.Ugale ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6804 OF 2007

M.S.Athalye ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6805 OF 2007

T.M.Singh ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6806 OF 2007

Runuddin Ahmed..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6807 OF 2007

H.B.Kawre ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6808 OF 2007

M.Barkatulla ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6809 OF 2007

M.A.Osmani ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6810 OF 2007

Vamanrao Deshpande ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6811 OF 2007

H.C.Khopale ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6812 OF 2007

G.S.Kulkarni ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6814 OF 2007

S.G.Kulkarni ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6815 OF 2007

V.N.Kulkarni ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6816 OF 2007

M.A.Siddiqui ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6817 OF 2007

S.N.Kavishwar..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6818 OF 2007

S.K.Gangakhedkar..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

WITH

WRIT PETITION NO. 6819 OF 2007

G.N.Jehagirdar..... ....Petitioner
V/s
The Executive Engineer (PWD) & Ors. ....Respondents

Mr.P.K.Dhakephalkar, Sr. Adv. With Mr.N.V.Gangal for the petitioners.

Mr.R.K.Momin, Adv. For petitioners in W.P.Nos.6769 & 6778/07.

Mr.A.A.Kumbhakoni, Associate Adv. General with Ms.V.S.Mhaispurkar, AGP for the respondents.

CORAM: A.P.DESHPANDE, J.

1/11/07

PC:

As identical question of fact and law emerges for decision in these writ petitions they are heard together and are being disposed of by this common order.

2. The present petitioners are in occupation of government quarters since the initial allotment was made in their favour as government servants while being in service. Out of these 62 petitioners 35 government servants have expired and their family members are in occupation of the premises. Whereas in other cases the government servants continue to occupy the premises despite having retired from government service about 20/25 years back. After issuance of termination notices proceedings were initiated before the Competent Authority under the provisions of the Bombay Government Premises (Eviction) Act, 1955 and the petitioners instead of showing cause before the Competent Authority as to why they should not be evicted from the unauthorized occupation of premises, they chose to file writ petition in this Court through an association of allocated government servants from Ex-Madhya Pradesh and Hyderabad States. According to the petitioners the said association of allocated government servants is a society duly registered under the provisions of Society Registration act and all the petitioners are undisputed by members of the said society.

3. In writ petition filed by the association and in other

connected petitions filed by similarly situated employees a prayer was made for quashing the show cause notices of eviction served upon them being ultra virus and illegal and by a further prayer a writ of mandamus was sought to direct the State of Maharashtra to make permanent alternate accommodation available to the members of the association pursuant to the assurances given by the respondents in the said writ petition viz. State Government and Union of India. In brief, the case of the present petitioners filed through the association of allocated government servants bearing writ petition No.402/06 was that the petitioners are allocated government servants originally from ex-Madhya Pradesh and Hyderabad States who came to be posted and/or transferred from their home states to the then Bombay State under the States Recognition Act, 1956 and that the State Government and Union of India had assured the petitioners that the petitioners would be provided permanent alternate accommodation. Various contentions based on principles of legitimate expectation, promissory estoppel etc. were pressed in service before the Division Bench in Writ Petition No.402/06. The division bench rejecting the writ petition in para 6 of its judgment held thus:

> "6. The Government premises are service accommodations to be occupied till such time that the employee is in service in terms of Rules and can continue to occupy for the period which the rules permit. In the instant case the ex-employees and their families continue to reside for several years though they have no such right. The State

has stayed the order of eviction from time to time. Once the State Government made its decision and informed the Union of India that they could not accommodate these allocated government employees, in our opinion, nothing further survives and the occupation of these persons is illegal."

The division bench thus concluded that the occupation of the petitioners is illegal. The division bench also noted the fact that prior to the filing of the writ petition by the association, the association had moved the Supreme Court by filing writ petition which came to be dismissed. The operative part of the order after discharging the rule reads thus:

"Members of the petitioners in writ petition No.402/06 and writ petition No.383/06 if still residing in the premises, along with all adult family members residing in those premises to file an undertaking to this Court within a period of three weeks from today that they will vacate the premises within six months from today in which event State Government not to take steps to evict them. On failure to file undertaking it will be open to the respondents to take steps to evict them.

In cases of other petitioners State Government to proceed to evict them after a period of three months from today."

Thus, after the dismissal of the writ petition the present petitioners ought to have vacated the government premises but they did not. Hence pending eviction cases on the file of the Competent

Authority were taken up by the said authority. The order passed by the Competent Authority reveals that after the show cause notices of eviction under section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the "Act") were served on the present petitioners they informed the Competent Authority through the President of the said Association Shri A.H.Nandkishore that all the petitioners through the said association have filed writ petition in the High Court and hence the cases on the file of Competent Authority be adjourned. The proceedings thus were adjourned awaiting decision of the High Court. As the Competent Authority noticed that the High Court has held that the occupation of the premises by the petitioners is unauthorized and the period granted for vacating the premises has expired it proceeded to pass an order of eviction. The said order of eviction was challenged by the present petitioners by filing appeals before the Bombay City Civil Court and the dismissal of the said appeals by a common judgment by the City Civil Court has given rise to the filing of these petitions.

4. Learned counsel for the petitioners has submitted that the impugned order of eviction has been passed in breach of principles of natural justice in as much as the Competent Authority did not make any inquiry envisaged by sections 4 and 5 of the Bombay Government Premises (Eviction) Act, 1955 and thus the petitioners have been directed to be evicted without affording an opportunity of hearing. To bring home the point the learned counsel has pointed out from the order dated 29.12.2006 passed by the

Competent Authority that the Competent Authority has directed eviction of the petitioners solely relying upon the judgment of the High Court dated 28.9.2006. Per contra, the learned Associate Advocate General Shri Kumbhakoni has submitted that the petitioners themselves chose to challenge the show cause notice of eviction issued under section 4(1) by filing writ petition. In the writ petition the petitioners through the association had contended that they have a right to occupy the premises permanently. The High Court having categorically held that the occupation of the petitioners is illegal and unauthorized nothing is left to be inquired into by the Competent Authority.

5. It is to be seen that after show cause notices to the petitioners under section 4(1) of the act was issued, as to why they should not be evicted from government quarters on account of their unauthorized occupation the cases were fixed for hearing on 8.3.06 before the Competent Authority. At the request of the petitioners cases were adjourned to 24.3.06 and thereafter to 21.4.06. On 21.4.06 the present petitioners through their advocate Shri V.Z.Kankaria stated that the association of the allocated government servants of which 67 persons are the members have filed writ petition No.402/06 before the division bench of the High Court challenging notices issues to them under the Bombay Government Premises (Eviction) Act, 1955. On account of pendency of writ petition No.402/06 the advocate for the petitioners herein/occupants requested the Competent Authority to stay the proceedings till final decision of the writ petitions.

Acceding to the said request the inquiry in all cases was stayed. The inquiry contemplated by sections 4 and 5 relates to "unauthorized occupation of any public premises". Instead of participating in the proceedings under sections 4 and 5 of the act the petitioners chose to file writ petition and contended that their occupation is authorized and the State Government is obliged to proved them permanent accommodation. The said plea has been rejected and the High Court has held that the occupation of the petitioners is unauthorized and illegal. The Court also directed the eviction of the occupants/petitioners after expiry of given period. In this view of the matter there remains nothing to be inquired into by the Competent Authority. The issue as to whether any person is in unauthorized occupation of the public premises which is ordinarily decided by Competent Authority was taken up by the petitioners in writ petition and hence after adjudication of the writ petition the Competent Authority did not have any choice but to act pursuant to the judgment of the High Court. Once the High Court has pronounced on the occupation of the petitioners to be illegal the said aspect could not have been further inquired into by the Competent Authority. There is no substance in the contention raised by the learned counsel for the petitioner that after dismissal of the writ petition and after expiry of time granted by the High Court to vacate, the Competent Authority should have again gone through the ordeal of making inquiry under sections 4 and 5. The petitioners themselves chose to have the status of their possession inquired into by the High Court in writ petition filed by

them and thus the petitioners cannot after dismissal of writ petition urge for re-inquiry and re-decision by the Competent Authority in regard to their occupation. The inquiry which is ordinarily held by the Competent Authority under sections 4 and 5 of the act has in the present matters been conducted by the High Court by entertaining writ petition questioning the legality of the show causes notices of eviction. A remedy available before the Competent Authority to show cause against the notice of eviction was not availed of by the petitioners and they chose adjudication of their status as authorized occupants of the government premises by the High Court and hence there was no further scope for inquiry under section 4 and 5 of the act. The Competent Authority has rightly proceeded to act in pursuance of the judgment rendered by the High Court in the batch of petitions led by writ petition No.402/06.

6. Perusal of the appellate order further reveals that the judgment delivered by the division bench in Writ Petition No.402/06 was challenged by filing Special Leave Petition in the Supreme Court and the Supreme Court has confirmed the judgment of the High Court by dismissing the SLP. Thus the situation that emerges is that the occupation of the petitioners has been found to be unauthorized and illegal by the High Court and the Supreme Court. This very is the scope of inquiry under sections 4 and 5 of the act. The Appellate Court has rightly held that a further inquiry would be barred by the principles of constructive res judicata. As the High Court has adjudicated the

issue the petitioners cannot claim a further right of adjudication of their occupation to be authorized or unauthorized yet again at the hands of the Competent Authority. I do not see any merit in the writ petitions and the same are summarily dismissed.

At this stage learned counsel for the petitioners makes a prayer for stay of eviction till the end of academic year as some of the petitioners are said to have school and college going dependents. Learned association advocate general Shri Kumbhakoni opposes the prayer by contending that the petitioners are in unauthorized occupation of government premises for a period of about 20/25 years last and hence no indulgence be shown. Having regard to the totality of facts and circumstances prayer for stay of eviction is rejected.

1.11.07